



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1994

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR94-682

Dear Mr. Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28069.

The Texas Department of Human Services ("the department") received two requests for information under the Open Records Act. Both are requests for all records related to two civil rights complaints, Case Nos. 07179, 07183. One of the requests additionally asks for the records related to another civil rights complaint, Case No. 07150. The department asserts that all of the requested information is excepted from required public disclosure under section 552.103 of the Government Code. In the alternative, the department contends that witness statements in the case files are excepted from public disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege.

Section 552.103(a) of the Government Code excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

You advise that the department is presently involved in settlement negotiations regarding two of the claims, Case Nos. 07179, and 07183. We agree that the department may withhold the files on these claims under section 552.103(a) of the Government Code as information relating to settlement negotiations.¹ See Open Records Decision No. 245 (1980). However, since a settlement agreement has been executed on Case No. 07150, that file may not be withheld under section 552.103(a) as information relating to the settlement negotiations of Case No. 07150. However, you urge that "in light of the similarity of the underlying facts and allegations, the department contends that the information in all three files relates to reasonably anticipated litigation." We agree.

Section 552.103(a) of the Government Code excepts from required public disclosure information that relates to pending or reasonably anticipated litigation to which a governmental body is a party. See Open Records Decision No. 551 (1990). We believe that given the fact that the department is negotiating a settlement of the two claims, it is reasonable to anticipate that those negotiations might fail and that litigation may ensue.

We also believe that the information in the file on Case No. 07150 is related to the two pending cases. The underlying facts and the witnesses involved in all three complaints are similar. The issue in all three cases is whether a particular supervisor discriminated against her subordinates on the basis of race. We, therefore, conclude that the department may withhold from required public disclosure the file on Case No. 07150 pursuant to section 552.103(a) of the Government Code.

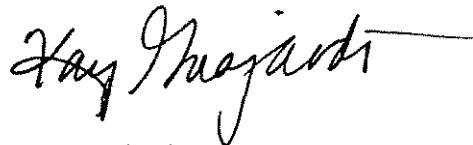
In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

¹Once the settlement agreements are executed, section 552.103(a) of the Government Code will no longer apply to the case files. See Open Records Decision No. 245 (1980).

²In light of our determination on your claim under section 552.103, we need not consider whether portions of the requested information are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/MRC/rho

Ref.: ID# 28069

Enclosures: Submitted documents

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